

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MATTHEW JONATHAN ANDERSON,  
*Petitioner.*

No. 2 CA-CR 2015-0144-PR  
Filed August 26, 2015

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Pima County  
No. CR20124116001  
The Honorable Christopher C. Browning, Judge

**REVIEW GRANTED; RELIEF GRANTED IN PART AND  
DENIED IN PART**

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COUNSEL

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines, Deputy County Attorney, Tucson  
*Counsel for Respondent*

Steven R. Sonenberg, Pima County Public Defender  
By Abigail Jensen, Assistant Public Defender, Tucson  
*Counsel for Petitioner*

STATE v. ANDERSON  
Decision of the Court

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

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ESPINOSA, Judge:

¶1 Matthew Anderson seeks review of the trial court's summary dismissal of his of-right petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he challenged the trial court's award of restitution and its imposition of a Criminal Restitution Order (CRO) for fines, fees, and assessments imposed. For the following reasons, we grant review, vacate a portion of the court's CRO, but otherwise deny relief.

¶2 Anderson was originally charged with the theft of jewelry belonging to J.J. and having "a value of \$4,000 or more but less than \$25,000." He also was charged with trafficking in that stolen property "belonging to" J.J. No other person or entity was named in the indictment. Pursuant to his plea agreement, Anderson pleaded guilty to the theft, the trafficking charge was dismissed, and he "agree[d] to pay restitution," in an amount "not to exceed \$1,520.00," to "all of the victims named in the original indictment, even if they are not named within the specific charge to which the defendant is pleading guilty." The trial court accepted his change of plea, and sentencing was scheduled for May 2, 2013.

¶3 According to the presentence report, Anderson agreed with the following summary:

On May 7, 2012, a detective with the Tucson Police Department received a phone call from the victim who reported jewelry, including an old engagement ring worth approximately \$7,000, had been stolen. She had houseguests two weeks

STATE v. ANDERSON  
Decision of the Court

prior to making the report and contacted one of those individuals who told her the defendant, who had also been a guest at her residence, took the jewelry and pawned it.

An investigation revealed the defendant pawned the victim's engagement ring on April 7, 2012, and received \$1,400 for the transaction. He pawned other jewelry on that same date and received \$120 for those items. Holds were placed on the jewelry.

Anderson did not object to these statements before sentencing and has not challenged their accuracy in these post-conviction proceedings.

¶4 On May 2, 2013, the trial court entered a judgment of conviction for theft and sentenced Anderson to a "partially aggravated," six-year prison term. The court ordered the determination of restitution "held in abeyance pending further information from the State," and it directed the prosecutor to submit restitution information within sixty days.

¶5 Several weeks later, the state filed a motion to release the recovered, stolen jewelry to J.J. and to recognize two pawnshops as "victim[s] for purposes of restitution" in the amount of \$1,520. After a hearing on the motion, the trial court ordered further briefing, and, in an under-advisement ruling on August 7, 2013, it granted the state's motion, concluding Anderson's "criminal conduct directly caused the economic loss" incurred by the pawnshops. On September 24, 2013, the court ordered Anderson to pay \$1,520 in restitution to the two pawnshops.

¶6 Anderson filed his notice of post-conviction relief on September 3, 2013, and in the petition that followed he alleged (1) the restitution order is void for lack of subject matter jurisdiction because it was issued more than sixty days after the original

STATE v. ANDERSON  
Decision of the Court

sentencing hearing; (2) the court erred in finding the pawnshops victims of Anderson's crime entitled to restitution under A.R.S. § 13-603(C); and (3) the court erred in ordering, in its minute entry for May 2, 2013, "all fines, fees, assessments and/or restitution . . . reduced to a [CRO]."

¶7 In its order summarily denying relief, the trial court found Anderson's claim regarding jurisdiction precluded pursuant to Rule 32.2(a)(3), by his failure to raise it before the court ordered restitution, and his challenge to the restitution award precluded pursuant to Rule 32.2(a)(2), because the argument had already been considered and "'finally adjudicated on the merits,'" *id.*, before the court entered its award. The court also found it had properly awarded restitution to the pawnshops, noting A.R.S. § 13-814, which expressly authorizes such an award, became effective shortly after its August decision to recognize the pawnshops' restitution claims.<sup>1</sup> This petition for review followed.

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<sup>1</sup>Section 13-814(A) provides as follows:

If the lawful owner of stolen property recovers the property from a pawnbroker or dealer and the person who sold or pledged the property to the pawnbroker or dealer is convicted of a violation of law that is related to the stolen or pledged property, the court shall order the defendant to make restitution to the pawnbroker pursuant to this chapter.

Although the trial court correctly observed that § 13-814 had not yet taken effect on August 6, 2013, when it issued its under-advisement ruling that the pawnbrokers were "entitled to restitution," the law became effective on September 13, 2013, before the court issued its restitution award ordering Anderson to pay \$1,400 to one pawnshop and \$120 to another. *See* 2013 Ariz. Sess. Laws, ch. 15, § 1. Because the parties have not raised or briefed the issue, we do not consider whether the court's restitution order was statutorily authorized by § 13-814. *But cf. State v. Cota*, 234 Ariz. 180, ¶ 9, 319 P.3d 242, 245 (App. 2014) (concluding amendment of A.R.S. § 13-805, permitting

STATE v. ANDERSON  
Decision of the Court

**Discussion**

¶8 We review a summary denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). As addressed below, we conclude the court did not abuse its discretion in summarily denying Anderson’s claims regarding restitution. We further conclude Anderson is entitled to partial relief from the CRO imposed, a claim not addressed in the court’s order denying relief.

**Jurisdiction to Enter Post-Judgment Restitution Award**

¶9 Anderson first suggests the trial court abused its discretion in concluding his challenge to the court’s jurisdiction was precluded by waiver pursuant to Rule 32.2(a). He then reasserts his claim that the court lacked jurisdiction to enter the restitution order more than sixty days after judgment was entered on May 2, 2013.

Waiver

¶10 Rule 32.1(b) allows a defendant to seek post-conviction relief on the ground that “[t]he court was without jurisdiction to render judgment or to impose sentence.” But Rule 32.2(a)(3) expressly provides such a claim is precluded if “waived at trial, on appeal, or in any previous collateral proceeding.” *See also* Ariz. R. Crim. P. 32.2(b) (only “claims for relief based on Rules 32.1(d), (e), (f), (g) and (h)” excepted from preclusive effect of Rule 32.2(a)). In finding Anderson’s jurisdiction claim precluded by waiver, the trial court noted he had not objected to the court’s jurisdiction at a hearing on the state’s motion to “recognize” the pawnbrokers as victims or when he sought additional time to comply with the court’s order for briefing on the issue.

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entry of CRO and accrual of interest for restitution from date ordered, was “non-punitive, procedural provision” applicable in pending cases).

STATE v. ANDERSON  
Decision of the Court

¶11 Anderson acknowledges that he “fail[ed] to challenge the trial court’s jurisdiction during the restitution proceedings.” Relying on cases decided on direct appeal, he nonetheless asserts that “challenges to subject matter jurisdiction are never waived.” Although we recognize that a first “Rule 32 proceeding is *the* appeal for a defendant pleading guilty,” *Montgomery v. Sheldon*, 182 Ariz. 118, 119, 893 P.2d 1281, 1282 (1995), the placement of jurisdictional claims in Rule 32.1(b), among the other claims subject to preclusion, suggests that a Rule 32 claim challenging the court’s subject matter jurisdiction may be waived by a failure to raise it in the trial court. *Cf. State v. Espinosa*, 200 Ariz. 503, 505, 29 P.3d 278, 280 (App. 2001) (Rule 32.1(a) claim of unconstitutional withdrawal of plea offer waived by failure to assert it before trial).

¶12 Moreover, even if a challenge to the court’s jurisdiction is subject to waiver under Rule 32.2(a)(3), as the trial court found here, a pleading defendant with a meritorious but unpreserved jurisdictional claim is not without recourse. Ordinarily, we would expect a pleading defendant to argue that trial counsel’s failure to assert a meritorious claim of lack of jurisdiction constituted ineffective assistance under Rule 32.1(a). Here, however, because the same counsel was appointed to represent Anderson in his plea proceedings and on his petition for post-conviction relief, such a claim would have been improper. *See Bennett*, 213 Ariz. 562, ¶¶ 14-15, 146 P.3d at 67 (noting it “improper for appellate counsel to argue his own ineffectiveness at trial”). As a result, Anderson would not be precluded from raising such a claim of ineffective assistance of trial counsel in a subsequent proceeding. *See id.* ¶ 16.

¶13 But the policy of judicial economy may best be served by addressing Anderson’s substantive challenge to jurisdiction in this proceeding. *See State v. Shrum*, 220 Ariz. 115, ¶¶ 11-12, 203 P.3d 1175, 1178 (2009) (noting Rule 32’s policy of consolidating all claims in one petition serves interest of finality and justice and prevents “nearly endless reviews of the same case in the same trial court”), quoting *Stewart v. Smith*, 202 Ariz. 446, ¶ 11, 46 P.3d 1067, 1071 (2002). Because we conclude Anderson failed to state a colorable claim on this issue, we need not resolve whether a pleading defendant’s challenge to subject matter jurisdiction, raised in an of-

STATE v. ANDERSON  
Decision of the Court

right proceeding, is subject to waiver at trial pursuant to Rule 32.2(a)(3). *See State v. Lopez*, 234 Ariz. 513, ¶ 10, 323 P.3d 1164, 1166 (App. 2014) (affirming denial of petition for post-conviction relief on ground other than that identified by trial court).

Jurisdiction

¶14 In arguing the trial court lacked jurisdiction to award restitution more than sixty days after the oral pronouncement of judgment, Anderson relies on this court's statement, in *State v. Serrano*, that a "judgment and sentence are 'complete and valid' upon oral pronouncement, Ariz. R. Crim. P. 26.16(a), and cannot be modified thereafter except as provided by Rule 24.3, Ariz. R. Crim. P.," 234 Ariz. 491, ¶ 9, 323 P.3d 774, 777 (App. 2014). Rule 24.3 provides, in relevant part, that a "court may correct any unlawful sentence or one imposed in an unlawful manner within 60 days of the entry of judgment and sentence but before the defendant's appeal, if any, is perfected."

¶15 In *Serrano*, we held the court lacked authority to modify a defendant's sentence to require him to register as a sex offender. 234 Ariz. 491, ¶ 9, 323 P.3d at 777. We explained that a registration requirement was not mandatory for Serrano's offense, but could have been imposed, in the court's discretion, had the state raised the issue at sentencing. *Id.* ¶ 7. Therefore, because the sentences originally imposed by the court "were not unlawful, . . . [n]or . . . imposed without regard for statutory and procedural rules," we concluded "[t]he absence of a registration order . . . did not allow the court to modify the judgment or sentences under Rule 24.3." *Id.* ¶ 11.

¶16 Anderson recognizes that, unlike the registration order in *Serrano*, a court's failure to award restitution when judgment is pronounced may be subject to "correct[ion]" under Rule 24.3. *See State v. Holguin*, 177 Ariz. 589, 591, 870 P.2d 407, 409 (App. 1993) (stating "[a] trial court is required to impose restitution to reimburse the victim for the full amount of his economic loss"). But he argues the court was without authority under that rule to "modify [his]

STATE v. ANDERSON  
Decision of the Court

sentence” by awarding restitution more than sixty days after the oral pronouncement of judgment.

¶17 We also find *Serrano* distinguishable because, in that case, we relied on the legislature’s “clear intent that any discretionary order that a person register as a sex offender must occur at the time of sentencing.” 234 Ariz. 491, ¶ 13, 323 P.3d at 778. In contrast, A.R.S. § 13-603(C) “is silent as to when restitution must be assessed,” although we have observed that “generally it is ordered at the time of sentencing”—if the court has “sufficient evidence at that time” to support a restitution award. *Holguin*, 177 Ariz. at 591, 870 P.2d at 409.

¶18 We previously have held that, absent a timely appeal by the state, Rule 24.3 requires a trial court to correct an illegally lenient sentence within sixty days after pronouncement “or the sentence will stand.” *State v. Bryant*, 219 Ariz. 514, ¶¶ 8, 11, 200 P.3d 1011, 1013-14 (App. 2008). But this is not a case in which a trial court erred in pronouncing a sentence, *see id.* ¶ 15, or refused to award restitution, *see State v. Ambalong*, 150 Ariz. 380, 723 P.2d 729 (App. 1986), *overruled on other grounds, State v. Dawson*, 164 Ariz. 278, 282, 792 P.2d 741, 745 (1990)—orders that would require “correct[ion]” pursuant to Rule 24.3 or on appeal. Instead, at sentencing, the court expressly ordered the issue of restitution “held in abeyance pending further information from the State,” deferring this aspect of the sentencing process to a later date.

¶19 Anderson seems to argue this procedure was impermissible, relying on language in Rule 26.16(a) providing that “[t]he judgment of conviction and the sentence thereon are complete and valid as of the time of their oral pronouncement in open court.” But Rule 26.1(b), Ariz. R. Crim. P., limits the definition of “sentence” to “the penalty imposed upon the defendant after a judgment of guilty.” And, although recognized as “part of the sentencing process, restitution is not a penalty or a disability.” *State v. Zaputil*, 220 Ariz. 425, ¶ 11, 207 P.3d 678, 681 (App. 2008).

¶20 Moreover, our supreme court has recognized that, although “restitution is typically imposed at the time of sentencing,”

STATE v. ANDERSON  
Decision of the Court

a restitution order entered after a judgment of conviction is separately appealable, by a non-pleading defendant, as an order affecting the “substantial rights of the part[ies]” under § 13-4033(A)(3).<sup>2</sup> *Hoffman v. Chandler*, 231 Ariz. 362, ¶¶ 7, 18, 295 P.3d 939, 940, 942-43 (2013) (pleading defendant may only challenge post-judgment restitution order in Rule 32 proceeding).

¶21 Accordingly, where, as here, a trial court “expressly retain[s] jurisdiction” to award restitution, *Zaputil*, 220 Ariz. 425, ¶ 16, 207 P.3d at 682, we conclude Rule 24.3 is not implicated by a post-judgment restitution order. In *Zaputil*, we held a restitution award was required when the victim had filed a timely claim and the trial court had “expressly retained jurisdiction” over restitution, even though the defendant had already completed probation and his conviction had been vacated pursuant to A.R.S. § 13-907. 220 Ariz. 425, ¶ 16, 207 P.3d at 682. We observed that A.R.S. § 13-805(A)<sup>3</sup>, “has been interpreted as expanding, rather than limiting, the trial court’s jurisdiction over restitution,” in light of “legislative and constitutional intent to promote restitution to victims.” *Id.* ¶¶ 15-18<sup>4</sup>; *cf. State v. Smith*, 112 Ariz. 208, 209, 540 P.2d 680, 681 (1975)

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<sup>2</sup>In his petition below, Anderson relied on *In re Alton D.*, 196 Ariz. 195, ¶¶ 9-14, 994 P.2d 402, 404-05 (2000), for the proposition that restitution claims must be resolved before a delinquency disposition is final and appealable. But our supreme court expressly noted its decision in *Alton D.* was based on “statutes governing juvenile proceedings” and the “unique nature and policies underlying the juvenile system,” and distinguished “restitution claims filed after final judgment [in] adult criminal actions.” *Id.* n.6.

<sup>3</sup>Section 13-805(A) provides, “The trial court shall retain jurisdiction of the case for purposes of ordering, modifying and enforcing the manner in which court-ordered payments are made until paid in full or until the defendant's sentence expires.”

<sup>4</sup>In attempting to distinguish *Zaputil* in his petition below, Anderson relied on dicta in *Holquin* to suggest the trial court lacked jurisdiction to issue a post-judgment restitution order because, unlike *Holquin* and *Zaputil*, Anderson was sentenced to prison. In *Holquin*, we noted the trial court “did not preclude the imposition of

STATE v. ANDERSON  
Decision of the Court

(requirement in Rule 26.3(a)(1), Ariz. R. Crim. P., that defendant be sentenced within thirty days of determination of guilt, “not jurisdictional”; short delay not reversible error absent showing of prejudice). Thus, the trial court did not abuse its discretion in denying relief on Anderson’s claim that the court exceeded its authority in awarding restitution.

### **Restitution to Pawnshops**

¶22 Anderson next argues the trial court abused its discretion in denying relief on his claim that the pawnshops were not “‘victims’ of the crime for which [he] was convicted and, therefore, are not entitled to restitution.” He challenges both the court’s determination that the claim is precluded and its denial on the merits of the claim.

### Preclusion

¶23 We agree with Anderson that the trial court was mistaken in finding this claim precluded pursuant to Rule 32.2(a)(2), which precludes relief “upon any ground . . . [f]inally adjudicated on the merits on appeal or in any previous collateral proceeding.” Notwithstanding the court’s consideration of Anderson’s argument before it awarded restitution, its resolution of the issue was not an adjudication that occurred “on appeal” or in a “previous collateral proceeding.” This is Anderson’s first, of-right, Rule 32 proceeding, and the claim is not precluded. *See Hoffman*, 231 Ariz. 362, ¶ 18, 295 P.3d at 942-43 (Rule 32.1 construed “to preserve the rights of pleading defendants to appellate review” of post-judgment restitution award).

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restitution” when it placed a defendant on probation, and we held it retained jurisdiction to order restitution when his probation was revoked and “a prison sentence subsequently imposed.” *Holguin*, 177 Ariz. at 591, 870 P.2d at 409. We did not address the circumstance here, where the court expressly ordered the matter of restitution “held in abeyance” for post-judgment determination and scheduled a hearing and further briefing to resolve contested issues.

STATE v. ANDERSON  
Decision of the Court

Restitution Award

¶24 “Generally, we review a restitution order for an abuse of discretion” and “view the evidence bearing on a restitution claim in the light most favorable to sustaining the court’s order.” *State v. Lewis*, 222 Ariz. 321, ¶ 5, 214 P.3d 409, 411-12 (App. 2009). Crime victims have a constitutional right to receive restitution from the person convicted of the criminal conduct that caused their loss, Ariz. Const. art. II, § 2.1(A)(8), and a trial court is required to order restitution to the “victim of the crime” for “the full amount of economic loss as determined by the court,” A.R.S. § 13-603(C). A court has “substantial discretion” in determining the amount of restitution due “according to the facts of the case,” and “[w]e will uphold a restitution award if it bears a reasonable relationship to the victim’s loss.” *State v. Madrid*, 207 Ariz. 296, ¶ 5, 85 P.3d 1054, 1056 (App. 2004).

¶25 But “[a] court may impose restitution only on charges for which a defendant has been found guilty, to which he has admitted, or for which he has agreed to pay.” *State v. Garcia*, 176 Ariz. 231, 236, 860 P.2d 498, 503 (App. 1993). And a restitution award must “meet[] three requirements: (1) the loss must be economic, (2) the loss must be one that the victim would not have incurred but for the criminal conduct, and (3) the criminal conduct must directly cause the economic loss.” *Madrid*, 207 Ariz. 296, ¶ 5, 85 P.3d at 1056.

¶26 Relying on *State v. French*, 166 Ariz. 247, 248-49, 801 P.2d 482, 483-84 (App. 1990), Anderson first argues that J.J. was the only “victim of the criminal conduct for which the defendant was convicted,” *id.* at 249, 801 P.2d at 484, and, therefore, the only person eligible for restitution. And, relying on *State v. Wilkinson*, he maintains the pawnshops’ losses “result[ed] from the concurrence of some causal event other than” the criminal conduct for which he was convicted. 202 Ariz. 27, ¶ 7, 39 P.3d 1131, 1133 (2002) (holding restitution required for “those damages that flow directly from the defendant’s criminal conduct, without the intervention of additional causative factors”). Specifically, he argues their losses did not

STATE v. ANDERSON  
Decision of the Court

qualify for restitution because they would not have occurred but for the “additional causative factor[],” *id.*, of his decision to pawn the jewelry, and thus were the direct result of the charge of trafficking in stolen property, a charge that was dismissed, and not the theft.

¶27 In *French*, the defendant pleaded guilty to an aggravated assault and sexual abuse he committed in a motel room. 166 Ariz. at 248, 801 P.2d at 483. Although his plea agreement provided for restitution, it did not specify the amount or to whom it would be paid. *Id.* This court vacated the award of restitution to the motel’s owner for property damage caused by the assault because she was “not a victim of assault or sexual abuse.” *Id.* at 249, 801 P.2d at 484; *see also State v. Monick*, 125 Ariz. 593, 595, 611 P.2d 946, 948 (App. 1980) (trial court clearly erred in awarding restitution, from defendant convicted of theft from a department store, “to a victim of an unrelated crime” of motorcycle theft “to which appellant has neither admitted guilt, been adjudicated guilty, nor agreed to pay restitution”).

¶28 But six months after *French* was decided, Arizona voters approved a constitutional amendment recognizing victims’ rights. Ariz. Const. art. II, § 2.1.<sup>5</sup> In *Wilkinson*, our supreme court considered restitution in the context of that constitutional amendment and its implementing legislation. 202 Ariz. 27, ¶¶ 6-7, 39 P.3d at 1133; *see also* A.R.S. §§ 13-4401 to 13-4437.<sup>6</sup> In upholding a restitution award to homeowners for the amount they had paid to a defendant convicted of contracting without a license, the court

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<sup>5</sup> The amendment defines “victim” to include “a person against whom the criminal offense has been committed.” Ariz. Const. art. II, § 2.1(C).

<sup>6</sup> We have recognized the legislature’s “broad remedial intent” in enacting this legislation to “‘preserve and protect’” victims’ rights, *Lewis*, 222 Ariz. 321, n.4, 214 P.3d at 412 n.4, *quoting* A.R.S. § 13-4418, as evinced by its “emphasizing that the constitutional rights of ‘innocent persons [who] suffer economic loss’ should be fully protected,” *Madrid*, 207 Ariz. 296, ¶ 7, 85 P.3d at 1057, *quoting* 1991 Ariz. Sess. Laws, ch. 229, § 2 (alteration in *Madrid*).

STATE v. ANDERSON  
Decision of the Court

relied on the statutory definition of economic loss as “any loss incurred by a person as a result of the commission of an offense,” but excluding “damages for pain and suffering, punitive damages or consequential damages,” as well as the legislature’s direction that a court consider “all losses caused by the criminal offense or offenses for which the defendant has been convicted.” 202 Ariz. 27, ¶ 6, 39 P.3d at 1133, quoting A.R.S. §§ 13-105(14)<sup>7</sup> and 13-804(B), respectively (emphasis added in *Wilkinson*).

¶29 The court in *Wilkinson* thus clarified that “the conduct causing damage need not be an element of the crime for which the defendant is convicted”; rather, “[t]he test is whether particular criminal conduct directly causes the victim’s loss.” *Id.* ¶ 14. And, notwithstanding the prohibition against awarding restitution to “a victim of an *unrelated* crime,” *Monick*, 125 Ariz. at 595, 611 P.2d at 948 (emphasis added), we have recognized that restitution to a person or entity not named in an indictment may be appropriate when “the causal nexus between the [criminal] conduct and the loss is not too attenuated (either factually or temporally).” *Lewis*, 222 Ariz. 321, ¶ 11, 214 P.3d at 413, quoting *State v. Guilliams*, 208 Ariz. 48, ¶ 18, 90 P.3d 785, 790 (App. 2004) (alteration added). Thus, in *Lewis*, we affirmed an order requiring a defendant convicted of drive-by shooting – an offense that does not require, as an element, that a person be targeted – to make restitution to a shooting victim, even though he had been acquitted of an aggravated assault against her. *Id.* ¶¶ 8-9, 20. Similarly, in *Guilliams*, we observed that “restitution statutes do not require that a specific victim be named in a statute, indictment, or verdict form,” “so long as the criminal act directly results in economic damages” to the restitution recipient. 208 Ariz. 48, ¶¶ 13-15, 90 P.3d at 789-90 (recognizing Arizona Department of Corrections as victim of attempted escape for purpose of restitution).

¶30 In addition, we have also approved restitution awards to those who have incurred losses due to obligations they owed to a

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<sup>7</sup>Now renumbered, without amendment, as § 13-105(16). 2008 Ariz. Sess. Laws, ch. 301, § 10.

STATE v. ANDERSON  
Decision of the Court

crime victim for losses suffered as a result of the defendant's crime. Before our legislature specified that an insurer or other entity was entitled to restitution for compensation paid to "reimburse[]" a crime victim for her economic loss, A.R.S. § 13-804(E),<sup>8</sup> this court approved such awards, explaining that the legislative "mandate of restitution . . . is best fulfilled if 'victim' includes the entity suffering the economic loss resulting from appellant's criminal activity." *State v. Merrill*, 136 Ariz. 300, 301, 665 P.2d 1022, 1023 (App. 1983) (rejecting argument that "payment of restitution is limited to the direct victim" of a crime); *see also State v. Prieto*, 172 Ariz. 298, 299, 836 P.2d 1008, 1009 (App. 1992) (Arizona Department of Economic Security "secondary victim" of child molestation entitled to restitution for evaluation, counseling, and parent aide services to benefit child victim).

¶31 Thus, we have observed that "[t]he objectives of mandatory restitution are both reparative and rehabilitative in nature: to make the victim whole, . . . and to make the offender 'recognize the specific consequences of his criminal activity and accept responsibility for those consequences.'" *State v. Freeman*, 174 Ariz. 303, 306, 848 P.2d 882, 885 (App. 1993) (internal citation omitted), *quoting Merrill*, 136 Ariz. at 301, 665 P.2d at 1023 (legislature did not intend restitution to be precluded when "immediate victim of the crime [had been] fully reimbursed by an insurance carrier") (alteration added).

¶32 We recognize that the pawnshops here did not reimburse the victim for her economic loss, as had the insurer in *Merrill*, 136 Ariz. at 301, 665 P.2d at 1023; nor is a pawnshop entitled to restitution as "an entity which stands in the shoes of the victim

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<sup>8</sup>Section 13-804(E) provides, in relevant part, "If a victim has received reimbursement for the victim's economic loss from an insurance company, a crime victim compensation program funded pursuant to § 41-2407 or any other entity, the court shall order the defendant to pay the restitution to that entity." This provision was originally enacted as an amendment to § 13-804(D). *See* 1996 Ariz. Sess. Laws, ch. 117, § 1.

STATE v. ANDERSON  
Decision of the Court

because it is legally required to suffer the victim's own precise loss," as in *Prieto*, 172 Ariz. at 299, 836 P.2d at 1009. But neither were the pawnshops' losses wholly "unrelated" to Anderson's conviction, as were the losses found ineligible for restitution in *Monick*, 125 Ariz. at 595, 611 P.2d at 948. And, unlike the incidental property damage suffered by the hotel owner in *French*, which benefitted no one, 166 Ariz. at 248, 801 P.2d at 483, the loss suffered by the pawnshops was commensurate with a benefit to Anderson that was directly related to his theft of J.J.'s jewelry. Thus, recognizing the pawnshops as victims comports with "the original conception of restitution, and the form with the most direct link to criminal conduct" by "forcing the criminal to yield up . . . the fruits of the crime" such that "[t]he crime is thereby made worthless to the criminal." *Wilkinson*, 202 Ariz. 27, ¶ 9, 39 P.3d at 1133, quoting *United States v. Fountain*, 768 F.2d 790, 800 (7th Cir. 1985) (alterations added).

¶33 In similar circumstances, the North Carolina Court of Appeals found pawnshops to be "aggrieved parties" and "proper subjects for restitution" under North Carolina law, explaining as follows:

[S]hortly after defendant committed the larceny he presented the stolen items to pawnshops as collateral for loans. The record establishes that the stolen items have been returned to the rightful owner. The pawnbrokers thus have lost the collateral that secured their loans. As a result they are without security and at risk of loss or damage if the loans are not repaid. We believe such loss or damage would directly relate to or "aris[e] out of" the larceny for which defendant was convicted.

*State v. Froneberger*, 344 S.E.2d 344, 348 (N.C. Ct. App. 1986) (alteration in *Froneberger*); see also *Merrill*, 136 Ariz. at 302-03, 665 P.2d at 1024-25 (likening broad inclusion of "aggrieved parties" in federal probation statutes to Arizona's "similarly expansive

STATE v. ANDERSON  
Decision of the Court

definition” requiring “restitution to those suffering economic loss”); *State v. Morris*, 173 Ariz. 14, 16, 839 P.2d 434, 436 (App. 1992) (noting similarly inclusive language in § 13-804(A)).

¶34 As the trial court noted in its order denying relief, the Arizona legislature has made clear that courts are to follow the reasoning in *Froneberger* and recognize pawnbrokers as victims entitled to restitution in a case such as this. See § 13-814; *supra* note 1. We conclude that, under the circumstances here, the trial court reasonably could have found “the causal nexus” between Anderson’s theft of J.J.’s property and the economic loss suffered by the pawnshops was “not too attenuated” to support restitution. *Lewis*, 222 Ariz. 321, ¶ 16, 214 P.3d at 414, quoting *Guilliams*, 208 Ariz. 48, ¶ 18, 90 P.3d at 790. The court did not abuse its discretion in denying relief on Anderson’s claim that restitution, in an amount Anderson had agreed to pay, had been erroneously awarded to the two pawnshops.<sup>9</sup>

### **Criminal Restitution Order**

¶35 In its May 2, 2013 sentencing minute entry, the trial court ordered “all fines, fees, assessments and/or restitution . . .

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<sup>9</sup>This is not a case in which the plea agreement was silent on the amount of restitution to be imposed. See *State v. Phillips*, 152 Ariz. 533, 535, 733 P.2d 1116, 1118 (1987) (holding defendant thoroughly understands consequences of agreement to make restitution when plea agreement caps amount that may be ordered). Although we recognize the plea agreement was inartfully drafted, in light of the state’s failure to name the pawnshops as victims in the indictment, the trial court reasonably could have relied on Anderson’s agreement to make restitution for the dismissed trafficking claim, as well as the theft, in the amount of \$1,520, the exact amount Anderson allegedly received from the two pawnshops in exchange for pledges made on J.J.’s property. Cf. *Morris*, 173 Ariz. at 16, 839 P.2d at 436 (plea agreement’s provision that defendant pay restitution to specified victim did not preclude restitution award to victim’s insurer).

STATE v. ANDERSON  
Decision of the Court

reduced to a Criminal Restitution Order, with no interest, penalties or collection fees to accrue while the defendant is in the Department of Corrections.” Anderson is correct that the court lacked authority to issue a CRO pertaining to “fines, fees, [and] assessments” at sentencing, *see Cota*, 234 Ariz. 180, ¶ 15, 319 P.3d at 246, and we vacate that portion of the court’s order, such that “the CRO entered at sentencing exclusively applies to an award of restitution.” *Id.* ¶ 17.<sup>10</sup>

**Disposition**

¶36 For the foregoing reasons, we grant review and vacate the portion of the court’s order of May 2, 2013 reducing all “fines, fees, [and] assessments” to a CRO. In all other respects, relief is denied.

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<sup>10</sup>Anderson cites no authority for his request that we order the Clerk of the Pima County Superior Court to record a copy of this decision, and we decline to do so.